

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36795

STATE OF IDAHO,	)	2010 Unpublished Opinion No. 400
	)	
Plaintiff-Respondent,	)	Filed: March 25, 2010
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
MARCUS D. MCGRAY,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the First Judicial District, State of Idaho, Bonner County. Hon. John P. Luster, District Judge.

Order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Heather M. Carlson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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Before GUTIERREZ, Judge; GRATTON, Judge;  
and MELANSON, Judge

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PER CURIAM

Marcus D. McGray pled guilty to felony driving under the influence. I.C. § 18-8004, 18-8005(7). The district court sentenced McGray to to a unified term of five years, with a minimum period of confinement of four years, to run concurrent with an unrelated sentence. McGray filed an I.C.R. 35 motion, which the district court denied. McGray appeals.

A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). An appeal from the

denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information. *Id.* Because no new information in support of McGray's Rule 35 motion was presented, review of the sentence by this Court is precluded. For the foregoing reasons, the district court's order denying McGray's Rule 35 motion is affirmed.